



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



Public Copy

FILE: [REDACTED]

Office: Vermont Service Center

Date: NOV 1 2000

IN RE: Applicant [REDACTED]

APPLICATION: Application for Temporary Protected Status under § 244 of the
Immigration and Nationality Act, 8 U.S.C. 1254a

IN BEHALF OF APPLICANT: Self-represented

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:


This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Terrence M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who indicated on his application that he resided in Honduras until December 1993 when he entered the United States without inspection. The acting director denied the application for Temporary Protected Status (TPS) under § 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1254a, because the applicant's criminal conviction and failure to provide dispositions of other charges rendered him ineligible for TPS.

On appeal, the applicant states that the charges are old and the majority are without substance or under unusual conditions. The applicant indicates on April 29, 2000 that a brief will follow in 30 days.

More than 30 days have elapsed since the appeal was filed and no new documentation has been included in the record. Therefore, a decision will be entered based on the present record.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. 244, provide that an applicant who is a national of Honduras is eligible for temporary protected status only if such alien establishes that he or she:

- a. Is a national of a state designated under § 244(b) of the Act;
- b. Has been continuously physically present in the United States since January 5, 1999;
- c. Has continuously resided in the United States since December 30, 1998;
- d. Is admissible as an immigrant;
- e. Is not ineligible under 8 C.F.R. 240.4; and
- f. Pursuant to § 303(b)(1) of IMMACT 90, has timely registered for such status between January 5, 1999 and July 5, 2000.

The term continuously physically present, as used in 8 C.F.R. 244.1, means actual physical presence in the United States since January 5, 1999. Any departure, not authorized by the Service, including any brief, casual, and innocent departure, shall be deemed to break an alien's continuous physical presence.

Section 244. [8 U.S.C. 1254a]

(c) ALIENS ELIGIBLE FOR TEMPORARY PROTECTED STATUS.-

(2) ELIGIBILITY STANDARDS.-

(A), WAIVER OF CERTAIN GROUNDS FOR INADMISSIBILITY.-In the determination of an alien's admissibility for purposes of subparagraph (A)(iii) of paragraph (1)-

(i) the provisions of paragraphs (5) and (7)(A) of § 212(a) shall not apply;

(ii) except as provided in clause (iii), the Attorney General may waive any other provision of § 212(a) of the Act in the case of individual aliens for humanitarian purposes, to assure family unity, or when it otherwise is in the public interest; but

(iii) the Attorney General may not waive -

(I) paragraphs (2)(A) and (2)(B) (relating to criminals) of such section,

(II) paragraph (2)(C) of such section (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marijuana, or

(III) paragraphs (3)(A), (3)(B), (3)(C), and (3)(E) of such section (relating to national security and participation in the Nazi persecutions or those who have engaged in genocide).

(B) ALIENS INELIGIBLE.-An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that-

(i) the alien has been convicted of any felony or 2 misdemeanors committed in the United States,....

The acting director listed eight arrests in the Service's decision taken from the FBI Identification Record. Four of those arrests; on April 26, 1991 for Criminal Trespassing to Property; on June 6, 1993 for Theft FM Auto; on July 13, 1994 for Assault with Intent to Cause Physical Harm; and on January 10, 1998 for Rape, have no dispositions. It is incumbent upon the applicant to provide that information. The acting director also noted that the applicant was arrested on September 20, 1991 and pleaded guilty to the charge of Assault with Intent to Cause Physical Harm. The applicant was sentenced to time served.

The burden of proof is upon the applicant to establish that he or she meets the above requirements and he or she has not been convicted of any felony or 2 misdemeanors committed in the United States. Applicants shall submit all documentation as required in the instructions or requested by the Service. 8 C.F.R. 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. 244.9(b).

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of § 244 of the Act. The applicant has failed to meet that burden of proof and has failed to submit all documentation required. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.